

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOSEPH CHRISTOFORO,  
Plaintiff

vs.

JULIO LUPO  
Defendant

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Docket No. 03-l2307 RGS

**ASSENTED TO MOTION TO AMEND DEFENDANT'S AMENDED ANSWER**

Now comes the Defendant, Julio Lupo, and moves that this Honorable Court, pursuant to **Fed. R. Civ. Pro. Rule 15(a)** allow the Defendant to amend his Amended Answer in the above-entitled matter. As reasons in support thereof the Defendant states as follows:

1. Paragraph 12 of the Plaintiff's Amended Complaint alleges: "That as a result of the above-described assault Mr. Christoforo sustained physical injuries, mental anguish, emotional distress and permanent injuries".
2. Paragraph 12 of the Plaintiff's Amended Answer stated: "The Defendant admits the allegations in this Paragraph".
3. This response was an inadvertent error. The Defendant, throughout the Amended Answer, denied that there was an assault. For example, in Paragraph 11 of the Amended Complaint, the Plaintiff alleged "extensive and permanent" injuries and specifies several. The Defendant denied this. Throughout the Defendant's original Motion for Summary Judgment, the Defendant claimed that the injuries received by the Defendant were *de minimus*. The Plaintiff never asserted that the Defendant had "admitted" to causing injury and this Court, relied upon Plaintiff's medical records, **not admissions**, in denying Defendant's Summary Judgment Motion. (See Order, Paper #38). The Court specifically noting "[w]hether Christoforo can establish any permanent injury attributable to the attack goes to the issue of damages and not liability".
4. Finally, the Plaintiff assents to this motion and the amendment.

WHEREFORE, the Defendant requests that this Assented to Motion to Amend Defendant's, specifically, allowing the Defendant to amend Paragraph 12 of his Amended Answer to "**denies**" the allegations of this Paragraph.

The Defendant requests a hearing on this Motion.

Assented to by Plaintiff

Respectfully submitted

/s/Edward J. McCormick

Edward J. McCormick, III, BBO#329780

**McCormick & Maitland**

Hayward Manor, Suite 6

195 Main Street

Franklin, MA 02038

Tel: (508) 520-0333

/s/Joseph W. Monahan, III

Joseph W. Monahan, III, BBO#351100

Thomas J. Freda, BBO# 178150

Monahan & Padellaro

43 Thorndike Street

Cambridge, MA 02141

Tel: (617)494-1188

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